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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Federal-State Joint Board )  
on Universal Service )

CC Docket No. 96-45

TO: The Commission

**REPLY COMMENTS OF  
AMERICAN PERSONAL COMMUNICATIONS**

In its initial comments in this proceeding, APC asserted that (i) the Joint Board's recommended universal service fund overstated the amount that local exchange carriers must recover by including part of the cost of a telephone company's switch and local loop that should be allocated to enhanced services; (ii) the Commission should adopt incentives that drive down the fund to an efficient level; and (iii) fund contributions should be assessed in a manner that minimizes accounting gimmicks and maximizes fairness.<sup>1/</sup> The comments filed by nearly all the parties except the incumbent local exchange carriers support the fundamental principle articulated by APC: The Commission has an affirmative obligation to minimize the size of the universal service fund.<sup>2/</sup> APC submits these reply comments to underscore its support for this principle

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<sup>1/</sup> APC further argued that the Commission should reject the Board's finding that the 1993 Budget Act permits states to impose universal service fees on CMRS providers. *Accord, e.g.,* Comments of CTIA at 13-16.

<sup>2/</sup> *See, e.g.,* Comments of Sprint Spectrum L.P. d/b/a Sprint PCS at 2-4; Comments of AT&T at 14-23.

and to address other ideas put forth in the comments that will promote an efficient universal service fund mechanism.

**I. THE COMMISSION SHOULD ADOPT SPECIFIC PROPOSALS TO  
CREATE AN EFFICIENT UNIVERSAL SERVICE FUND.**

Because universal service support involves a payment of subsidies from one class of consumers to another, and a system of subsidies necessarily has a distorting effect on economic behavior,<sup>3/</sup> the FCC has an obligation to minimize the amount of the subsidy while fulfilling its statutory mandate. The FCC can accomplish this goal in two ways. *First*, the Commission should adopt incentives and rules that, assuming a certain level of universal service, act to minimize the cost of the program. *Second*, the Commission should adopt a narrow definition of universal services which meets the Congressional mandate but does not unduly expand the extent or scope of the subsidy program. The Joint Board's Recommended Decision needs to be amended to ensure that these two goals are accomplished.

**A. The Commission Should Adopt Mechanisms That Minimize The  
Cost Of The Program.**

In its initial comments APC argued that eligible carriers should not receive any support from the universal support mechanism for elements or portions of elements of the local loop that are used to provide enhanced services such as caller ID, call

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<sup>3/</sup> See generally A. Auerbach and M. Feldstein, HANDBOOK OF PUBLIC ECONOMICS, Vol. I (1985).

forwarding, voice mailboxes, call return, or Internet access service.<sup>4/</sup> Because the Joint Board did not address this issue, APC raised the concern that the Board's recommendation overstates the amount of local loop costs that LECs should be able to recover. We recognize that the use of a proxy model to identify universal costs, which the Commission will adopt after further study, could address this concern. In that context, APC endorses the comments of MCI and others which urged the Commission to adopt a proxy model that accurately reflects the actual costs of providing universal service and excludes unrelated costs.<sup>5/</sup>

In adopting a proxy model, however, the Commission must recognize that universal service can be provided not just by new entrants, but also by new technology. CTIA correctly points out that the proposed proxy models are flawed because they are based upon wireline technology and thus "could prejudice CMRS providers and result in an artificially inflated high cost subsidy."<sup>6/</sup> Though wireless technology may not be cost competitive with wireline service in every part of the country for every service today, the Commission should acknowledge in its proxy model that "present wireless technologies

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<sup>4/</sup> See Comments of APC at 3-5.

<sup>5/</sup> Comments of MCI Telecommunications Corp. at 4-6.

<sup>6/</sup> Comments of CTIA at 6-8. CTIA also discusses other parts of the Joint Board's recommendations which are explicitly technology neutral. *Id.* at 3-4. APC shares CTIA's support of the goal of Commission rules that are technology and competitively neutral.

and future wireless advances may make non-wireline carriers the least cost service provider in certain circumstances."<sup>7/</sup>

The Commission can further promote efficiency by ensuring its rules are both competitively and technologically neutral. Though the proxy models discussed by the Joint Board fail on that score, APC commends the Joint Board for other parts of the *Recommended Decision* which strive for technological neutrality. In particular, APC urges the FCC to adopt the Joint Board's recommendation that an eligible carrier could obtain universal service support on the basis of Census Block Groups instead of by exchanges. The Joint Board correctly recognized that the random geographic contours of an incumbent telephone company's facilities should not dictate the service area for other providers. *Recommended Decision* at ¶ 176. As Sprint Spectrum demonstrates, Census Block Groups are more homogenous and more closely linked with economic activity than exchanges, and therefore more closely approximate a service area that new entrants would be interested in serving.<sup>8/</sup> This proposal will be of substantial benefit to CMRS providers seeking to compete to provide universal service.

Another method that the Commission can use to minimize costs is to adopt a carefully structured competitive bidding system. As Sprint PCS persuasively argues, "competitive bidding, properly implemented, will exert continual downward pressure on the overall size of the high-cost fund . . . [and] reduce the role of regulation in the

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<sup>7/</sup> *Id.* at 7.

<sup>8/</sup> Comments of Sprint Spectrum L.P. d/b/a Sprint PCS at 7-8.

universal service system."<sup>9/</sup> APC urges the Commission to adopt the Joint Board's recommendation to investigate how to structure a fair and effective competitive bidding system. *Recommended Decision* at ¶ 349.

**B. The Commission Should Adopt A Narrow Definition Of Universal Service Which Meets The Congressional Mandate But Does Not Unduly Expand The Extent Or Scope Of The Subsidy Program.**

The Joint Board's definition of universal service is generally narrow, and APC joins the overwhelming majority of commenters in endorsing the Board's definition of "core" telecommunications services that will be subsidized. The Joint Board also made a sound decision on the scope of universal service support -- for example, it recommended against supporting a second line to a home, or a line to a vacation home. *Recommended Decision* at ¶ 89. Clearly, such service is not "essential to education, public health, or public safety." See 47 U.S.C. § 254(c)(1)(A). However, in two areas the Joint Board's recommendation expands the scope and definition of universal service in a manner that is without merit or contrary to law.

1. Single-line business customers.

The Joint Board recommends extending universal service support to single-line businesses in high cost areas. *Recommended Decision* at ¶ 91. This unprecedented decision to support business use of telecommunications services is taken without any evidence that such telephone service is prohibitively expensive for business customers.

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<sup>9/</sup> *Id.* at 5.

Moreover, the Board gave no indication as to how many users would qualify for this additional subsidy.

APC agrees with a number of commenters that the Commission should reject the recommendation to extend universal service to business customers of any class.<sup>10/</sup> In assessing this recommendation, the Commission must adhere to Congress's definition of services eligible for support: "telecommunications services [which] are essential to education, public health, or public safety." 47 U.S.C. § 254(c)(1). The Joint Board fails to make the case that service to single-line business users is "essential" and meets that definition.

## 2. Schools and libraries.

The Joint Board recommends that schools and libraries receive support for access to Internet service, *and* that the discount program be extended to inside wiring and to customer premise equipment (CPE) associated with internal connections.

*Recommended Decision* at ¶¶ 476-480 (stating that internal connections included routers, hubs, network file servers and wireless LANs but not computer PCs). APC agrees with AirTouch, PCIA, the Illinois Commerce Commission, AT&T and other commenters that this proposal, though well intentioned, reaches far beyond the scope of the authority of the FCC.<sup>11/</sup>

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<sup>10/</sup> See, e.g., Comments of NCTA at 5; Comments of AirTouch at 22.

<sup>11/</sup> See, e.g., Comments of AirTouch at 18-19; Comments of PCIA at 19-20; Comments of AT&T at 18-22; Comments of Illinois Commerce Commission at 8; Comments of Ameritech at 19; Comments of SBC Communications Inc. at 43.

Section 254 of the Communications Act of 1934 requires the Commission to adopt policies that preserve and enhance "universal *service*", i.e., basic telephone services that should be available to all Americans. 47 U.S.C. § 254(a). Reflecting its judgment that schools should be a gateway to more sophisticated telecommunications services, Congress adopted a special provision aimed at improving the services available to schools. Thus, Section 254(h)(2) directs the Commission to establish rules to enhance access to "advanced telecommunications and information *services*" for schools and libraries. To meet that mandate, the Joint Board recommends that universal service be used to support Internet service to schools -- a decision that is plainly within the Joint Board's (and Commission's) prerogative. The Joint Board erred, however, in recommending that universal service support be extended to subsidize the purchase of inside wiring and CPE.

A plain reading of the text of Section 254 along side Commission and court precedent shows that the Commission's traditional boundary between "equipment" and "services" has not been breached, nor has it been extended. For the last thirty years, the Commission has drawn and maintained a much-litigated line between "services" and "equipment."<sup>12/</sup> During that time the Commission has held that CPE, defined as products that interconnect with the telephone network and are on the customer's premise,

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<sup>12/</sup> See, e.g., *Use of the Carterfone Device in Messaging Toll Telephone Services*, 13 FCC 2d 420, recon. denied, 14 FCC 2d 571 (1968); Amendment of § 64.702 of the Commission's Rules & Regulations, 77 FCC 2d 384 (1980) ("*Computer II*"); *North Carolina Util. Comm'n v. FCC*, 552 F.2d 1036 (4th Cir. 1977); *Computer and Communications v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

is severable from the underlying common carrier transmission services and should be treated differently, i.e., not regulated.<sup>13/</sup> The *Recommended Decision*, however, ignores this precedent and instead pulls routers, hubs, network file servers, and wireless LANs over the line and puts them under the heading of "services." This decision is without merit. These devices are plainly products that interconnect with the network -- that is why they are being subsidized. See *Recommended Decision* at ¶ 477. Equally obvious is the fact that they are on the customer's premise. Consequently, the Joint Board seeks to change by fiat the character of these devices from "equipment" to "services" and subject them to universal service support.

The Commission must consider the logical extension of the Joint Board's conclusion. What is the end point? Would a consumer's landline or PCS phone be subject to universal service support? It is hard to find a technological distinction between a router or hub and a PBX, or a subscriber's PCS phone and a wireless LAN. Yet it would not be seriously argued that the Commission could adopt a plan that subsidizes the purchase of a landline phone from Radio Shack. Similarly, the Commission cannot adopt a plan that subsidizes other equipment used on a customer's premise to interconnect with the network.

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<sup>13/</sup> See *Computer II*, 77 FCC 2d at 388.



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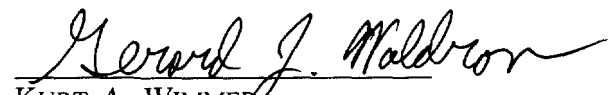
### CONCLUSION

For the reasons stated above, APC urges the Commission to modify the Joint Board's recommendation in accordance with these comments.

Respectfully submitted,

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